IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL CONTEMPT PETITION NO.18 OF 2003

Suresh Gundurao Wandkar
15, Manohar Mahal, 252, New
Mogal Lane, Mahim, Mumbai-16. Petitioner

vs.

1. State of Maharashtra
2. Shri M.K.Shirke,
Section Officer, Home
Department, Mantralaya,
Mumbai - 400 032. Contemnors

Mr.U.D.Bhatt for the petitioner.

Mrs.P.H.Kantharia, APP for the respondent no.1-State.

M.K.Shirke, respondent no.2-contemnor in person.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 13th April 2005

ORAL JUDGMENT (Per R.M.Lodha,J.):

We heard Mr.U.D.Bhatt,the learned counsel for the petitioner, Ms.P.H.Kantharia,the learned APP and Madhav Kashiram Shirke, contemnor in person.

2. The petitioner-Suresh Gundurao Wandkar while working as Senior Inspector at Taloja was booked under the Prevention of Corruption Act, 1988 on 21st September 1994. He was suspended from service. In the criminal case he was acquitted by the criminal Court. By the

time he was acquitted by the criminal Court, he had already retired. He made a representation to the State for payment of gratuity and pension. For quite some time when he did not hear from the State nor received the gratuity and pension, he filed original application before the Maharashtra Administrative Tribunal for redressal of his grievance. In opposition to the petitioner's original application before the Maharashtra Administrative Tribunal an affidavit came to be filed by the present contemnor on behalf of the State. In the said affidavit, the contemnor stated that against the order of acquittal passed in the criminal case, the State had preferred an appeal before the High Court and that the said appeal was pending. In the light of such statement made in the affidavit of the contemnor, the petitioner's original application came to be rejected by the Maharashtra Administrative Tribunal.

3. It is petitioner's case that he searched the record of the High Court and found that no criminal appeal or criminal application for leave to appeal was filed by the State against the order of acquittal.

4. The petitioner then moved the Advocate General for granting consent under the Contempt of Courts Act, 1971 for initiating proceedings of criminal contempt against the present contemnor.

5. The Advocate General on July 1, 2003 gave consent to the petitioner and, accordingly, present contempt petition was filed by the petitioner.

6. On 12th January 2004, rule was issued in the contempt petition and pursuant thereto the contemnor has put in appearance and filed his affidavit.

7. In the reply affidavit, the contemnor has set up the defence that he filed the affidavit in the Original Application before the Maharashtra Administrative Tribunal as per the remarks received from the Office of the Director General of Police, Maharashtra State. He admitted the incorrect statement made by him in the affidavit but according to him it was not made deliberately or intentionally. He has also tendered his apology in the reply affidavit.

8. The contemnor who appears in person was apprised again by us during the course of hearing that charge against him is that he filed false affidavit before the Maharashtra Administrative Tribunal stating that the State Government had filed an appeal against the order of acquittal passed by the Special Judge, Raigad in the Special Case No.1/1995. As a result of that statement the Maharashtra Administrative Tribunal declined the

petitioner's claim of pensionary benefits etc. The contemnor was informed that by filing false affidavit he interfered in the administration of justice and thereby committed criminal contempt under Section 2(c) of the Contempt of Courts Act, 1971.

9. The contemnor referred to his reply affidavit dated 18th March 2005 after understanding the gravaman of the charge against him and prayed for leniency.

10. That the statement made by him in his affidavit before the Maharashtra Administrative Tribunal that the State had preferred appeal against the order of acquittal passed in Special Criminal Case No.1/1995 and that that appeal was pending before the High Court is false is not in doubt. The only explanation in the reply affidavit of contemnor is that the said statement was made on the basis of parawise comments received from the Office of the Director General of Police. In our considered opinion, the contemnor cannot be absolved from his responsibility in making false statement on oath on the ground that such false statement was based on parawise remarks forwarded by somebody. The contemnor must face the consequence for having made false statement in the affidavit sworn by him and cannot be permitted to pass on buck to some other person. As a matter of fact, as a result of the false statement made

in the affidavit by the contemnor, the petitioner's Original Application came to be rejected by the Maharashtra Administrative Tribunal. By filing false affidavit before the Maharashtra Administrative Tribunal the contemnor obstructed the administration of justice and thereby exposed himself to the criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act. Such act of filing false affidavit by the contemnor also resulted in prejudicing the due course of proceedings before the Maharashtra Administrative Tribunal.

11. We are, thus, satisfied that a case of criminal contempt under Section 2(c) of the Contempt of Courts Act is established against the contemnor.

12. Looking to the gravity of the matter, we are not persuaded to accept the apology tendered by the contemnor.

13. We then heard the contemnor on the point of sentence. The contemnor is Section Officer in Home Department, Government of Maharashtra. He has been in the Government service for the last 27 years. Awarding the sentence under Section 12 of the Contempt of Courts Act is an exception. In the facts and circumstances of the case, we are satisfied that award

of sentence shall not be justified, but imposition of fine shall meet the ends of justice. In our view, a fine of Rs.2,000/- shall subserve the ends of justice.

14. We, accordingly, dispose of this contempt petition by the following order:

_ORDER

(i) The contemnor-Madhav Kashiram Shirke is held guilty of criminal contempt under Section 2(c) of Contempt of Courts Act, 1971 for making false statement in the affidavit filed by him before the Maharashtra Administrative Tribunal in Original Application No.313/2000.

(ii) The contemnor is punished with a fine of Rs.2,000/-.

(iii) The fine shall be deposited by the contemnor with the Registry of this Court within two weeks from today.

(iv) The fine so deposited by the contemnor shall be paid to the petitioner.

(v) In default of payment of fine within the

aforesaid period, the contemnor is sentenced to suffer simple imprisonment for three days.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)